



E. Molly Hemsley

Vice President, Government Affairs and
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November 20, 2003

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Presentation

**In the Matter of Telephone Portability: CTIA Petitions for Declaratory
Ruling on Wireline-Wireless Porting Issues, CG Docket No. 95-116; In the
Matter of Rules and Regulations Implementing the Telephone Consumer
Protection Act of 1991, CG Docket No. 02-278**

Dear Ms. Dortch:

On Thursday November 20, Molly Hemsley of the Newspaper Association of America and Anita Wallgren, of Sidley & Austin, representing the Tribune Company, met with Richard Smith, Erica McMahon and Genaro Fullano of the Consumer and Government Affairs Bureau and Scott Mackoul of the Wireline Competition Bureau to discuss the impact of the Commission's order on telephone portability on compliance with the Commission's rules and regulations implementing the Telephone Consumer Protection Act.

Specifically, Ms. Hemsley and Ms. Wallgren discussed the adverse impact of the wireline to wireless portability rules on telemarketing calls to customers with whom newspapers have an established business relationship since the FCC's telemarketing regulations prohibit calls to wireless numbers using autodialers. In addition, Ms. Hemsley and Ms. Wallgren raised the concern that specific data identifying wireline numbers ported to wireless numbers is not currently available to newspapers and will not be available by Nov. 24.

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The attached document was presented to the group which outlines the concerns newspapers presently have with the interplay between the two sets of rules.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, we hereby submit this notice of a permitted oral *ex parte* presentation in the above-reference proceedings.

Respectfully submitted,

/s/ E. Molly Hemsley

E. Molly Hemsley

cc: Erica McMahon, via email
Richard Smith, via email
Genaro Fullano, via email
Scott Mackoul, via email

Wireline/Wireless Portability and Newspaper Telemarketing

- Newspapers have taken aggressive steps to comply with the FCC's telemarketing rules with more half of half of renewals coming from telemarketing. A key component of those regulations is the established business relationship exemption, which allows newspapers to reach existing customers about special offers or to renew subscriptions, both of which are pro-consumer. The Federal Communication Commissions recently announced LNP Order allowing consumers to port their wireline and wireless telephone numbers will upset the established business relationship that newspapers have counted on to reach past and present subscribers.
- In its Telemarketing Report and Order, the FCC did not discuss the potential impact these rules will have on consumers with whom there is an established business relationship. If newspapers cannot determine whether a number is wireless because the consumer has ported it from a wireline number, the newspaper will not be able to call its customers with whom it has an established business relationship rendering the exemption null and void. Even if a newspaper is ultimately able to distinguish which numbers are wireless and which are wireline, the predicted number of wireline numbers to be ported to wireless will greatly undermine the establish business relationship exemption.
- According to various published reports, the number of wireline numbers that will be ported to wireless telephone numbers is predicted to number in the millions. If such a large-scale conversion does take place, newspaper will not be able to rely on existing databases of wireline numbers to conduct their telemarketing operations. Because there does not appear to be any means by which newspapers are going to be able to quickly ascertain which wireline numbers have been ported to wireless, newspapers may have to opt to completely shut down their telemarketing operations. The impact of such a step on newspaper circulation will be dramatic, severely limiting a newspaper's ability to maintain, much less grow, circulation.
- The FCC in its Telemarketing Report and Order determined that its regulations did not need to be altered because of portability or pooling rules because to date telemarketers had been able to distinguish between wireline and wireless numbers. While the FCC is correct in stating that telemarketers have been prohibited from using autodialers to call cell phones for the last 12 years, it does not recognize that 12 years ago the number of cell phones in use was just a fraction of what it is today. Even today with wide spread use of wireless telephones, consumers have not been able to switch carriers, whether from wireless or wireline, while keeping a specific number. As a result, not calling cell phone numbers was easier to manage.
- Further, the fact that number pooling has been allowed for the last few years, does not change the fact that these blocks of numbers that were pooled were done so in relatively large identifiable groups and certainly not done on a daily basis which can and will happen under the portability rules.
- Despite the fact that "telemarketers have found adequate methods in the past to comply with the TCPA's prohibition on telephone calls using an autodialer" there are no apparent means by which a newspaper can determine whether a particular telephone number is "assigned" to a wireless phone if that number previously had been assigned to a wireline phone. All indications are that this information is not readily available and that companies with access to it are not forth coming in making that information available.
- The TCPA and FCC rules impose a standard of strict liability for violations. The Commission has recently announced an intended forfeiture of \$780,000 against AT&T, the State Attorney General of California has brought suit against an individual company for alleged violations of the national Do Not Call rules, and private causes of action expose newspapers to potentially millions of dollars in damages, should violations be found.

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- The Commission should clarify that newspapers can call customers with whom they have an established business relationship even if that customer has ported his or her wireline number to a wireless number. Further, the Commission should consider the impact of such a high exposure to significant risk and respond by declaring that inadvertent calls placed by autodialers to ported wireless numbers are not actionable, at least for an interim period while reliable technologically based solutions emerge.